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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/904,692	07/13/2001	Raymond Francis Jakubowicz	961_002	4749

20874 7590 09/28/2006

WALL MARJAMA & BILINSKI  
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SYRACUSE, NY 13202

EXAMINER

ALEXANDER, LYLE

ART UNIT	PAPER NUMBER
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1743

DATE MAILED: 09/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/904,692

Applicant(s)

JAKUBOWICZ ET AL.

Examiner

Lyle A. Alexander

Art Unit

1743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 3,6-22,56-59 and 62-66 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3,6-22, 56-59 and 62-66 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 3,6-22, 56-59 and 62-66 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The 7/11/06 amendments specify "... at least two second drive mechanisms...: which is not taught in the original disclosure. Upon review of the specification, the Office notes that a third drive mechanism is taught. Is the claimed second "second drive mechanism" the same as the taught third drive mechanism. Applicants' response should direct the Office to the appropriate portions of the specification for support.

***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 3,6-22, 56-59 and 62-66 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Jakubowicz et al. (USP 5,244,633).

Jakubowicz et al. teach an incubator using two independently driven concentric rings that have been read on the claimed "inner" and "outer" rings. The original

specification of the instant application teaches of page 7 lines 8+ "... the term "element" ... refers to ... any form of sample container". The claimed "slide elements" have been read on the taught --cuvettes--. Claim 1 stated the two rings are in a common plane, independently rotated and that sample cuvettes are moved between the rings without coming out of the common horizontal plane.

### ***Response to Arguments***

Applicant's arguments filed 7/11/06 have been fully considered but they are not persuasive.

Applicants' amendments that specify the inner and outer rings rotate about an axis within a common horizontal plane and the slide elements move exclusively within the common plane were sufficient to overcome the 35 USC 103 rejections over Miller, Carey and Muzak et al.

Applicants' state Jakubowicz et al. are not relevant because they are directed to movement of "cuvettes" rather than "slide elements". The original specification of the instant application teaches of page 7 lines 8+ "... the term "element" ... refers to ... any form of sample container". The claimed "slide elements" have been properly read on the cuvettes taught by Jakubowicz et al. Applicants' may consider better defining the claimed "slide elements" to define over these references.

Applicants' state Jakubowicz et al. fail to teach loading of the cuvettes into the inner ring. The pending limitations do not exclude the movement of a sample from the outer ring to the inner ring which read on the instant claims. The pending claims do not

specify loading of the inner ring from somewhere other than the outer ring. Rather, the claims are directed to relative movement between the rings which is met by Jakubowicz et al.

Applicants' state Jakubowicz et al. fails to teach the at least one second drive mechanism including at least one reciprocating pusher blade assembly for loading slide elements into said inner ring and for moving slide elements between said inner ring and said outer ring. Jakubowicz et al. teach pusher elements(204,208) that have been read on the instant claims.

Applicants' state Jakubowicz et al. teach a different type of pusher than presently claimed here. The instant claim language is sufficiently broad that it has been properly read on Jakubowicz et al.

Applicants' state claims 62-63 have been specifically amended describing the pusher blade assembly enabling radial movement either into and/or out of the incubator, as well as radial movement between the inner and out rings. It appears the instant claims are directed to the relative movement between the inner and out rings.

Applicants' may consider further amendments to better describe the movements of slides into or out of the incubator.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lyle A. Alexander whose telephone number is 571-272-1254. The examiner can normally be reached on Monday, Wednesday and Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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A handwritten signature in black ink, appearing to read 'Lyle A. Alexander'.

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Lyle A Alexander  
Primary Examiner  
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